

Title	Ex Parte Application in Unlawful Detainer Proceeding (amend Rule 379)
Summary	The proposed amendment to rule 379 would except unlawful detainer cases from the 10:00 a.m.-day-before-the-hearing notice requirement to provide that a party seeking an ex parte order in an unlawful detainer proceeding must give reasonable notice before the ex parte appearance.
Source	Civil and Small Claims Advisory Committee
Staff	Cara Vonk, 415-865-7669
Discussion	<p>Two southern California legal aid services have requested that the Judicial Council amend rule 379 to provide for an expedited ex parte procedure in unlawful detainer cases. Under rule 379 a party seeking an ex parte order must notify all parties no later than 10:00 a.m. the court day before the ex parte appearance, absent a showing of exceptional circumstances. Apparently some courts will not process requests for an ex parte order in unlawful detainer cases unless notice has been given by 10:00 a.m. the court day before the hearing. This is especially problematic where an eviction is taking place on a Friday and the ex parte application under the current rule cannot be considered until the following Monday.</p> <p>The committee first considered the proponent's original proposal for a four hours' notice rule of an ex parte application in an unlawful detainer proceeding. However, the committee determined that the better rule would be to eliminate a specific time and permit the judge to determine what constitutes "reasonable notice" under the circumstances. Unlawful detainer cases have priority under the code and quick action is often required. The proposal that reasonable notice be given before the ex parte appearance is consistent with the expedited and summary nature of an unlawful detainer proceeding. The committee determined that requiring "reasonable notice" rather than some specified time before the hearing will give the court the greatest flexibility, taking into account the circumstances under which the request is made. This should also eliminate the possibility of a clerk rejecting the request if a time or hour is specified in the rule.</p> <p>The committee also discussed eliminating the time requirement altogether for all cases, allowing a judge hearing an ex parte matter to decide what constitutes reasonable notice under the circumstances. However, this suggestion was firmly rejected by committee members in light of the recent adoption of rule 379 that eliminated variations in local notice requirements to promote uniform statewide practice.</p>
	A copy of proposed amended rule 379 is attached.

PROPOSAL

Rule 379 of the California Rules of Court would be amended, effective January 1, 2002, to read:

Rule 379. Ex parte applications and orders in civil law and motion proceedings in trial courts and discovery proceedings in family law and probate proceedings

(a) **[Ex parte application]** An application for an order ~~shall~~ must not be made ex parte unless it appears by affidavit or declaration

(1) that within a reasonable time before the application the party informed the opposing party or the opposing party's attorney when and where the application would be made; or

(2) that the party in good faith attempted to inform the opposing party and the opposing party's attorney but was unable to do so, specifying the efforts made to inform them; or

(3) that for reasons specified the party should not be required to inform the opposing party or the opposing party's attorney.

(b) **[Notice]** A party seeking an ex parte order, except in an unlawful detainer proceeding, ~~shall~~ must notify all parties no later than 10:00 a.m. the court day before the ex parte appearance, absent a showing of exceptional circumstances. A party seeking an ex parte order in an unlawful detainer proceeding must give reasonable notice before the ex parte appearance. A declaration of notice, including the date, time, manner, and name of the party informed, the relief sought, any response, and whether opposition is expected, or a declaration stating reasons why notice should not be required, ~~shall~~ must accompany every request for an ex parte order.

A request for an ex parte order ~~shall~~ must state the name, address, and telephone number of any attorney known to the applicant to be an attorney for any party or, if no such attorney is known, the name, address, and telephone number of such party if known to the applicant.

When an application for an ex parte order has been made to the court and has been refused in whole or in part, any subsequent application of the same character or for the same relief, although made upon an alleged different state of facts, ~~shall~~ must include a full disclosure of any prior applications and the court's actions.

- 1 (c) **[Content of notice]** When notice of an application is given, the person
2 giving notice ~~shall~~ must state with specificity the nature of the relief to
3 be requested and the date, time, and place for the presentment of the
4 application, and ~~shall~~ must attempt to determine whether the opposing
5 party and/or counsel will appear to oppose the application.
6
- 7 (d) **[Required documents]** Ex parte applications ~~shall~~ must be in writing
8 and include all of the following:
9
- 10 (1) an application containing the case caption and stating the relief
11 requested;
12
- 13 (2) a declaration in support of the application;
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- 15 (3) a competent declaration based on personal knowledge as described
16 in subdivision (b);
17
- 18 (4) points and authorities; and
19
- 20 (5) a proposed order.
21
- 22 (e) **[Affirmative factual showing required]** An applicant ~~shall~~ must make
23 an affirmative factual showing in a declaration containing competent
24 testimony based on personal knowledge of irreparable harm, immediate
25 danger, or any other statutory basis for granting ex parte relief rather
26 than setting the matter for hearing on noticed motion.
27
- 28 (f) **[Service of papers]** Parties appearing at the ex parte hearing ~~shall~~ must
29 serve the ex parte application or any written opposition on all other
30 appearing parties at the first reasonable opportunity. Absent exceptional
31 circumstances, no hearing ~~shall~~ may be conducted unless such service
32 has been made.
33
- 34 (g) **[Personal appearance requirements]** An ex parte application will be
35 considered without a personal appearance of the applicant or applicant's
36 counsel in the following cases only:
37
- 38 (1) applications to file points and authorities in excess of the
39 applicable page limit;
40
- 41 (2) setting of hearing dates on alternative writs and orders to show
42 cause; and
43
- 44 (3) stipulations by the parties or other orders of the court.